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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITE HERE LOCAL 2; SAN MATEO HOTEL )  
EMPLOYEES & RESTAURANT EMPLOYEES )  
WELFARE FUND; SAN MATEO HOTEL )  
EMPLOYEES & RESTAURANT EMPLOYEES )  
PENSION FUND; SHERRI CHIESA, JAMES )  
BEARD, HAL BOBROW, MIKE CASEY, THO )  
DO, and RICHARD ROMANSKI, Trustees of the )  
San Mateo Hotel Employees & Restaurant )  
Employees Welfare and Pension Funds, )  
Plaintiffs, )  
v. )  
SFO GOOD-NITE INN, LLC, a California limited )  
liability company; and BANG JA KIM, an )  
individual, )  
Defendants. )

Case No. C07-02588 BZ

**AMENDED  
JOINT CASE MANAGEMENT  
STATEMENT AND  
PROPOSED ORDER  
(L.R. 16-9)**

Date: March 24, 2007  
Time: 4:00 p.m.  
Courtroom: G, 15<sup>th</sup> Floor

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

**1. Jurisdiction and Service.**

**a. Jurisdiction.**

The jurisdiction of this court is invoked pursuant to Sections 502 and 515 of the

1  
2 Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C., §§ 1132 and 1145  
3 and Section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185.  
4 Jurisdiction also exists under 28 U.S.C. § 1337 and § 2201.

5           b.     Service.

6           Plaintiffs have timely and properly served Defendants SFO Good Nite Inn, LLC ("Good-  
7 Nite Inn" or "the Hotel") and Bang Ja Kim ("Kim"). Plaintiffs have voluntarily dismissed all  
8 claims against defendant Eric Yokeno in this action.

9  
10          2.     Facts.

11           a.     Plaintiffs' Description.

12           This action was brought by Plaintiffs UNITE HERE Local 2 ("Local 2" or "the Union");  
13 the San Mateo Hotel Employees & Restaurant Employees Welfare Fund; San Mateo Hotel  
14 Employees & Restaurant Employees Pension Fund (collectively "Trust Funds"); Sherri Chiesa,  
15 James Beard, Hal Bobrow, Mike Casey, Tho Do, and Richard Romanski, (collectively  
16 "Trustees") of the Trust Funds, to collect unpaid Union dues and Trust Fund contributions,  
17 pursuant to the terms of Defendants' collective bargaining agreement with the Union and the  
18 employee benefit plan trust agreements established thereunder.  
19

20           Plaintiffs are not aware of any specific factual disputes.

21           b.     Defendants' Description.

22           Defendants the Hotel and Kim dispute the existence of a collective bargaining agreement  
23 and/or a collective bargaining agreement that required Defendants the Hotel and Kim to pay  
24 contributions during any relevant time period.  
25

26           Defendants the Hotel and Kim further dispute any duty to pay Union dues based on the  
27 Unions failure to pursue administrative relief by way of an unfair labor practice charge filed with  
28

1  
2 the National Labor Relations Board during the applicable statute of limitations period and/or  
3 filing a grievance under the collective bargaining agreement the Union claims exists.

4 Further, during the relevant time frame of this suit, Defendants the Hotel and Kim have  
5 negotiated to impasse with Plaintiff Union.

6  
7 3. Legal Issues.

8 a. Plaintiffs' Position.

9 Plaintiffs are not aware of any disputed legal issues as this is a straightforward  
10 collections action under ERISA and LMRA for unpaid contributions to a employee benefit plans  
11 and unpaid union dues.

12 b. Defendants' Position.

13 In order to pursue this action, Plaintiffs must prove the existence of a valid  
14 collective bargaining agreement that requires the payment of contributions and/or dues. See  
15 *Laborers Health and Welfare Trust Fund for Northern California v. Advanced Lightweight*  
16 *Concrete, Co.*, 484 U. S. 539, 108 S. Ct. 830 (1988).

17 If Plaintiff Union does prove the existence of a valid collective bargaining  
18 agreement that required Defendants the Hotel and Kim to remit and/or pay dues during any time  
19 relevant, the Union's claim is barred as a result of its failure to pursue administrative relief with  
20 (1) the National Labor Relations Board by filing an unfair labor practice charge within six  
21 months of the alleged failure to remit dues and/or (2) its failure to file a grievance pursuant to any  
22 relevant collective bargaining agreement. See *Carpenters Fringe Benefit Funds of Illinois v.*  
23 *McKenzie Engineering*, 217 F. 2d 578 (2000).

24 Further to the extent any collective bargaining agreement existed and Defendants the  
25 Hotel and Kim had any duty to bargain with Plaintiff Union, Defendants have negotiated with  
26  
27  
28

1  
2 Plaintiff Union to impasse.

3 4. **Motions.** There are no pending motions. Plaintiffs intend to file a motion for summary  
4 judgment. Defendants anticipate filing a motion for summary judgment or scheduling cross-  
5 motions with Plaintiffs.

6  
7 5. **Amendment of Pleadings.** Because the damages calculations and other relief set out in  
8 the First Amended Complaint are based on an estimated number of employees and hours worked  
9 during the period of time Defendants failed to pay and submit monthly employer reports  
10 containing such information, following receipt of Defendants' initial disclosures, the parties will  
11 likely stipulate to permitting Plaintiffs to file a Second Amended Complaint in order to adjust  
12 these calculations.

13  
14 6. **Evidence Preservation.** The relevant payroll records are available and Defendants the  
15 Hotel and Kim have not been apprised by Plaintiffs of any additional records that are relevant to  
16 this matter. All other possibly relevant documents were produced within the National Labor  
17 Relations Board case referenced in paragraph 10 below.

18  
19 7. **Disclosures.** The parties certify that they will serve the other party with Initial  
20 Disclosures in accordance with Federal Rules of Civil Procedure. No further discovery has been  
21 taken to date.

22 8. **Discovery.** Plaintiffs plan to take all forms of discovery consistent with the Federal  
23 Rules of Civil Procedure. Defendants the Hotel and Kim also anticipate utilizing all forms of  
24 discovery consistent with the Federal Rules of Civil Procedure.

25 9. **Class Actions.** N/A

26  
27 10. **Related Cases.** On August 2, 2007, the parties stipulated in a motion requesting the  
28 Court to consider whether this case should be related to *Norelli v. SFO Good-Nite Inn, LLC*,

1  
2 Case No. C06-0733 MJJ, which is currently pending before the Honorable Martin J. Jenkins.  
3 However, Judges Jenkins and Zimmerman both denied the motion. The case pending before  
4 Judge Jenkins concerns a National Labor Relations Board Administrative Law Judge decision  
5 relating to Good-Nite Inn's September 14, 2005 withdrawal of recognition of the Union. The  
6 case before this Court concerns the question of whether Good-Nite Inn's (and Bang Ja Kim's)  
7 failure to pay contributions to the Trust Funds and check-off dues to the Union from September  
8 2005 to the present was improper.

9  
10 11. **Relief.** Plaintiffs seek: (a) a declaration by the Court ordering that Defendants comply  
11 with the mandatory reporting and contribution requirements under the collective bargaining  
12 agreement with the Union and trust agreements established thereunder; (b) T a declaration by the  
13 Court ordering that Defendants comply with union check-off and dues paying requirements per  
14 the collective bargaining agreement with the Union; (c) that Defendants be ordered to submit to  
15 an accounting to Trust Funds all of its payroll books and records for the since September 14,  
16 2005 until the date of judgment; (d) a judgment in the amount of unpaid contributions, liquidated  
17 damages and interest; (e) a judgment in the amount of unpaid union dues and interest; (f)  
18 attorneys' fees and costs; and (g) a preliminary and permanent injunction ordering Defendant  
19 Good-Nite Inn to pay Trust Funds the entire contribution deficiency, \$208,018.44, plus  
20 subsequent interest and attorneys' fees forthwith, and henceforward to make timely contributions  
21 in full to Trust Funds according to the rules of the Trust Funds and the governing Trust  
22 Agreements; (h) a preliminary and permanent injunction ordering Defendant Kim to pay Welfare  
23 Fund contributions in the amount of \$168,494.93, plus subsequent interest and attorneys' fees  
24 forthwith, and henceforward to make timely contributions in full to Trust Funds according to the  
25 rules of the Trust Funds and the governing Trust Agreements; (I) a preliminary and permanent  
26  
27  
28

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1  
2 injunction ordering Defendant Good-Nite Inn to pay Plaintiff Union the entire union dues  
3 deficiency, \$18,005.32, plus subsequent interest and attorneys' fees forthwith, and henceforward  
4 to make timely payments in full to Plaintiff Union pursuant to the Agreement.

5 12. **Settlement and ADR.** The parties are open to resolving this dispute through settlement;  
6 however, at this time, the parties believe that resolution of this case is tied to the outcome in  
7 Case No. C06-0733 MJJ (referenced in paragraph 10 above) as well as the outcome of any  
8 appeal taken by the Defendants to overturn the decision NLRB's finding that its withdrawal of  
9 recognition was improper.  
10

11 13. **Consent to Magistrate Judge for All Purposes.** The parties have previously filed their  
12 consent to Magistrate Judge Zimmerman to conduct further proceedings including trial and entry  
13 of judgment.  
14

15 14. **Other References.** The parties do not believe that reference to binding arbitration, a  
16 special master or other tribunals is appropriate at this time.

17 15. **Narrowing of Issues.** The parties believe that presentation of factual issues may be  
18 expedited by stipulation, but do not believe this matter should be bifurcated.  
19

20 16. **Expedited Schedule.** While Case No. C06-0733 MJJ remains pending, the parties do  
21 not believe this case can be handled on an expedited basis.

22 17. **Scheduling.** The parties believe that the discovery and motions schedule previously  
23 proposed in this matter should be vacated, and that the matter be stayed pending the outcome in  
24 Case No. C06-0733 MJJ as well as the outcome of any appeal taken by the Defendants to  
25 overturn the NLRB's finding that its withdrawal of recognition was improper. Upon the  
26 occurrence of such an outcome, either party ought to have leave to request a case management  
27 conference so that a new discovery and motions schedule may be set.  
28



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18 **Trial.** The parties do not believe that a trial date can be set until such time as a new discovery and motions schedule can be set.

19. **Disclosure of Non-party Interested Entities or Persons.** Plaintiffs certify that they know of no other entities to have any financial interest in the subject matter in controversy or any other kind of interest that could be substantially affected by the outcome of the proceeding.

Dated: March 17, 2007

LEONARD CARDER, LLP

By: /s/ Matthew D. Ross  
Matthew D. Ross  
Christine S. Hwang  
Attorneys for Plaintiffs

Dated: March 17, 2007

JORDAN LAW GROUP

By: /s/ Patrick Jordan  
Patrick Jordan  
Sarah Wolfe  
Attorneys for SFO Good-Nite Inn, LLC  
and Bang Ja Kim

### CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. MAGISTRATE JUDGE ZIMMERMAN